



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

March 22, 1993
AO-93-07

Ms. Elaine Powers
Town Clerk
175 Central Street, Box 387
E. Bridgewater, MA 02333-0387

Re: Use of School Resources for Political Purposes

Dear Ms. Powers:

This letter is in response to your October 27, 1992, letter requesting an advisory opinion as to whether the People For Better Schools ("PBS") may use the schools to distribute certain literature. I apologize for the delay in my response.

In your letter you stated that the PBS is a sub-group of the Educational Advisory Council ("Council"). The Council gives the school committee updated reports monthly. In October of 1992 a letter prepared by PBS was distributed to the elementary grades with the permission of the Superintendent of Schools. Returns were to be made to each child's teacher. The letter was not sent out on school paper. In a subsequent telephone conversation with this office's staff attorney, Marissa Horowitz, you stated that, at the time of the distribution, it was your understanding that PBS was attempting to influence votes at the Town Meeting to get voters to vote in favor of building a new school. You were requested by the Executive Secretary to the Board of Selectmen of the Town of East Bridgewater ("Town") to write the above referenced letter due to complaints received by the Board of Selectmen concerning distribution of this kind of letter through the schools.

You have asked whether it is legal to use the schools for distribution of the PBS letter or other letters of this kind. i.e., can the school system send letters home with the children. Since the distribution of the PBS letter is a past occurrence, I will not comment specifically on it's legality but rather, as you requested, provide guidance regarding the use of public resources in connection with campaign finance activity.

The Massachusetts campaign finance law, M.G.L. c.55, as well as specific case law, advisory opinions and interpretative bulletins issued by the Office of Campaign and Political Finance ("OCPF") prohibit the use of public resources to influence a ballot question or the election of a candidate. See Anderson v. City of Boston, 376 Mass. 178 (1978). In Anderson, the Court reasoned that a municipality should not use public funds to instruct the people, the ultimate authority, how they should vote. Anderson further held that neither the services of public employees nor the facilities of a municipality could be used to influence a [ballot] question. In sum, public resources, which include resources of a municipality and its schools cannot be used for distribution of advocacy material regarding questions on a ballot.¹ It is OCPF's opinion that the same prohibition holds true relative to the use of public resources to support or oppose a candidate or particular class of candidates.

Therefore, it is clear that a public school may not permit its resources to help produce or distribute any flyer, brochure or letter published by an organization which seeks to increase the participation of a certain class of voters in order to encourage those voters to support or oppose a particular candidate, group of candidates or ballot question. This prohibition would include permitting teachers and/or students to be used, in effect, as a courier service to distribute such information, which they may or may not agree with, in a manner which uses school, e.g. public, resources. I note that teachers and students are not prevented by the campaign finance law from distributing political material on their own time. However, such activity must comply not only with the disclosure and equal access requirements of the campaign finance law but also with other applicable laws and regulations governing public schools and the conduct of teachers. In particular, since your question may also raise questions under M.G.L. c.268A, the conflict-of-interest law, you may wish to consult with the State Ethics Commission.

1. Municipalities are further prohibited by other election laws from distributing, to voters or a class of voters, even purportedly "informational" voting material regarding a ballot question unless expressly authorized by statute. See Elections Divisions Memorandum, July, 26, 1991, a copy of which is enclosed for your information.

There are two important points or, perhaps, exceptions to the general prohibition against the use of public resources in the context of this advisory opinion.

First, the campaign finance law does not prohibit public resources from being used in connection with candidates elected at, or issues which are debated in, an open forum such as a **town meeting**.² Even issues resolved at a town meeting by a secret vote have not been considered to be questions "on the ballot".³ Therefore, any materials disseminated by a school in anticipation of a town meeting, which, for example, solely inform residents attending the meeting or which urge residents to vote "yes" or "no" on a topic at the town meeting, do not constitute advocacy or informational material seeking to influence or affect "the vote on any question submitted to the voters" (as that phrase is used in section 1 of M.G.L. c.55). See A0-88-23, A0-89-05, A0-89-12 and A0-89-32.

Second, the Anderson Court has indicated that if equal representation and access were given to each side on a ballot question, the use of some government resources could be permitted. Consistent with the Court's reasoning, OCPF has advised that areas within public buildings which are generally accessible to the public, such as auditoriums as opposed to individual offices, may be used by the opponents and the proponents of an initiative petition provided each side is given equal representation and access to such areas. Such a rule would hold true for candidate activities as well. In addition, OCPF has advised that candidates and proponents and opponents of ballot questions may be offered the use of certain public services if each side is provided the same opportunity.

2. Because the expenditure of municipal funds is governed by other laws and regulations administered and enforced by the Department of Revenue's Division of Local Services, you should consult with town counsel or the Division of Local Services. See M.G.L. c.40, s.5 et seq.

3. As a general rule, a question submitted to the voters must actually appear on the ballot in order for the provisions of M.G.L. c.55, the campaign finance law, to apply. However, if materials are printed and distributed in contemplation of a ballot question or a candidate's election, then the provisions of M.G.L. c.55 are fully applicable if such materials 1) advocate opposition to or support of a question or candidate and 2) that question or candidate subsequently actually appears on the ballot.

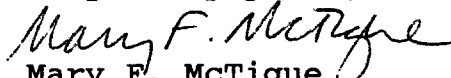
See AO-88-27 (city may offer mailing labels to candidates if all candidates are given same opportunity and purchase price reflected city's cost), AO-89-28 (candidates may use city council chamber to announce campaign if all candidates are given same opportunity and reimburse city for out-of pocket costs), AO-90-02 (public, but not private, areas within public buildings maybe used by opponents and proponents of initiative petition provided equal access and opportunity is given).

Finally, I note that any group of persons soliciting and/or receiving contributions of money or other things or value and/or making expenditures to support or oppose either a ballot question or a candidate or group of candidates must organize as a political committee with the city or town clerk if the purpose of the political committee is limited to local elections. See M.G.L. c.55, s.1. For your information on this point, I have enclosed a copy of OCPF's campaign finance guides relative to municipal candidates and ballot questions.

This opinion has been rendered solely on the basis of the representations made in your letter as well as telephone conversations with this office's legal counsel and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Very truly yours,


Mary F. McTigue
Director

cc: Andrew B. Crane, Executive Director
State Ethics Commission
Harry Grossman, Esq.
Division of Local Services